

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch**

Monroe Market,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0222413

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the Retailer Operations Division properly withdrew the authorization of Monroe Market (Monroe Market or Appellant) to participate as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether or not the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, in its administration of SNAP when it withdrew the authorization of Monroe Market to participate in SNAP.

AUTHORITY

7 USC § 2023 and the implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

In a letter dated May 3, 2019, the Retailer Operations Division informed Appellant that it was being withdrawn from the SNAP due to a failure to cooperate in the reauthorization process under 7 CFR 278.1(b) and 7 CFR 278.1(m). The letter noted that failing to comply with a store visit will result in the firm’s withdrawal from SNAP. The letter also noted that Appellant could reapply at any time after its withdrawal by completing an online store application.

In a letter dated September 4, 2019, Appellant requested an administrative review of the Retailer Operation Division’s decision to withdraw the firm’s SNAP authorization. The request for

administrative review was granted and implementation of the withdrawal was held in abeyance pending completion of this review.

STANDARD OF REVIEW

In appeals of adverse actions, the Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means the Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 USC § 2018, and SNAP regulations at Title 7 Code of Federal Regulations (CFR) Parts 271 and 278. In particular, SNAP regulations at 7 CFR § 278.1(n) establishes the authority upon which FNS may withdraw an application from a retail food store or wholesale food concern.

7 CFR 278.1(b) states

A retail store must meet eligibility determination factors which may be based on but not limited to, visual inspection, sales records, purchase records, counting of stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry. In determining eligibility, such information may be requested for verification purposes, and failure to provide such documentation may result in denial or withdrawal from the program.

7 CFR § 278.1(m) states:

FNS may withdraw or deny the authorization of any firm which: (1) Refuses to accept correspondence from FNS; (2) Fails to respond to inquiries from FNS within a reasonable time; or (3) Cannot be located by FNS with reasonable effort.

7 CFR 278.1(n) states

Periodic reauthorization. At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

APPELLANT'S CONTENTIONS

Appellant made the following summarized contentions in its administrative review request postmarked September 5, 2019, in relevant part:

- Appellant’s store hours changed and it is not required to report these hours.
- The inspector demanded that the owner sign the paper and was disrespectful and angry.
- The store owner called several days later to report this.
- The same inspector returned to the store and was very agitated.
- The store owner welcomed the inspector into the store but he never returned or completed the inspection.
- Appellant is fully aware of threatening behavior and has the right not to be harassed in the place of employment.
- Appellant requests that the withdrawal of the application be overturned and its authorization to be restored so it may serve the community the best way possible.

The preceding may represent only a brief summary of the Appellant’s contentions presented in this matter. However, in reaching a decision, full attention was given to all contentions presented, including any not specifically recapitulated or specifically referenced.

ANALYSIS AND FINDINGS

The Food & Nutrition Service (FNS) initially authorized Monroe Market for the SNAP on November 25, 2013. The firm was scheduled for a store visit on July 19, 2019, to confirm its continued eligibility to participate in the SNAP as part of a routine reauthorization. The record shows that the store owner signed the store visit form on July 19, 2019, refusing the store visit and indicating that it understood that refusal meant that the store would not be eligible to participate in the SNAP without a complete review. A second store visit was scheduled on August 17, 2019, and the visit was also refused.

The regulations at 7 CFR 278.1(b) are clear that eligibility is based on but “**not limited to**, visual inspection, ...” The store visit is a required part of the authorization process. The contractor provides a report and photographs from the store visit to the Retailer Operations Division. The Retailer Operations Division then uses the information provided, as well as other information available, to make an eligibility determination. Without the photographs from the store visit, the Retailer Operations Division is unable to make an eligibility determination.

After reviewing the case record and video documentation, it is the determination of this review that the decision to withdraw the firm’s authorization was appropriate and was made in accordance with SNAP regulations at 7 CFR § 278.1(n). Since there is not a required duration period for withdrawals made in accordance with 7 CFR § 278.1(n), a new application for SNAP participation may be submitted at any time.

CONCLUSION

On the basis of the analysis above, the decision by the Retailer Operations Division to withdraw the authorization of Monroe Market to participate as a retailer in SNAP is sustained. In accordance with the Food and Nutrition Act of 2008, as amended, and SNAP regulations, the withdrawal of Monroe Market shall become effective 30 days after receipt of this decision. A new application for SNAP participation may be submitted at any time.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 USC § 2023 and 7 CFR § 279.7. If a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

Mary Kate Karagiorgos
ADMINISTRATIVE REVIEW OFFICER

December 4, 2019